

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANTHONY VERZOLA,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendants.

C14-1334TSZ

ORDER

THIS MATTER comes before the Court on plaintiff's objections, docket no. 24, to the Report and Recommendation (R&R) of Magistrate Judge James P. Donohue, docket no. 20. Having considered the R&R, all of the materials submitted in support of and opposition to the R&R, and the administrative record, the Court adopts Magistrate Judge Donohue's R&R and affirms the decision of the Commissioner of Social Security.

Background

Plaintiff, Anthony Verzola, has a high school diploma, Administrative Record (AR) 41, and past employment that includes work as a warehouse laborer, AR 449. Plaintiff was gainfully employed until November 2010. AR 449. In June 2011, plaintiff

1 filed for Supplemental Security Income and Disability Insurance Benefits, claiming that
2 he had been disabled due to post-traumatic stress disorder (PTSD), back and neck
3 conditions, anxiety, and depression dating back to November 22, 2010. AR 229, 235.

4 Defendant, Carolyn Colvin, Acting Commissioner of Social Security (the
5 “Commissioner”), denied plaintiff’s claims, AR 152–60, and subsequently his request for
6 reconsideration, AR 162–75. In December 2012, an Administrative Law Judge (ALJ)
7 conducted a hearing on plaintiff’s claims. AR 34–82. In March 2013, the ALJ denied
8 plaintiff’s claims, finding that he was not disabled and that he could perform jobs that
9 existed in significant numbers in the economy. AR 13–28.

10 In August 2014, plaintiff appealed this decision to the district court. Compl.
11 (docket no. 1). In March 2015, Magistrate Judge Donohue issued an R&R
12 recommending that the Court affirm the Commissioner’s decision to deny plaintiff’s
13 claims for benefits. R&R (docket no. 20). In April 2015, plaintiff filed objections to the
14 R&R arguing that the magistrate judge failed to properly evaluate the findings of the ALJ
15 regarding the opinions of several physicians. Objections (docket no. 24) at 2.

16 **Discussion**

17 **A. Standard of Review**

18 A court’s review of a decision reached through application of the five-step process
19 is limited to assessing whether the Commissioner’s denial of benefits is free of legal error
20 and based on factual findings that are supported by substantial evidence. *Tidwell v.*
21 *Apfel*, 161 F.3d 599, 601 (9th Cir. 1998); *see also* 42 U.S.C. § 405(g). “‘Substantial
22 evidence’ means more than a mere scintilla, but less than a preponderance; it is such
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1 relevant evidence as a reasonable person might accept as adequate to support a
2 conclusion.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). While the
3 Court must consider “both the evidence that supports and the evidence that detracts from
4 the Commissioner’s conclusion,” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998), if
5 the “evidence is susceptible to more than one rational interpretation, one of which
6 supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*,
7 278 F.3d 947, 954 (9th Cir. 2002).

8 The Court reviews portions of the R&R to which objections have been raised *de*
9 *novo*. 28 U.S.C. § 636(b)(1). All other portions of the R&R to which no objection has
10 been made is reviewed under the “clearly erroneous or contrary to law” standard. *See* 28
11 U.S.C.A. § 636(b)(1)(A); *see also McDonnell Douglas Corp. v. Commodore Bus. Mach.,*
12 *Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

13 **B. Dr. Karen Ni**

14 Plaintiff contends that the magistrate judge erred in finding that the ALJ correctly
15 evaluated the opinion of Dr. Karen Ni. Upon examining plaintiff in November 2011, but
16 without reviewing plaintiff’s mental-health or psychological records, Dr. Ni opined that
17 plaintiff could not work for at least a year and that “he seemed quite fearful of returning
18 to a work or any public environment.” AR 721. The ALJ gave “[l]ittle to no weight” to
19 this opinion because it was not based on plaintiff’s longitudinal record and was based on
20 plaintiff’s subjective accounts of his symptoms, which were deemed not credible. AR 25.

21 The R&R found that the ALJ did not err in evaluating Dr. Ni’s opinion for the
22 following reasons: (1) Dr. Ni’s limited perspective on plaintiff’s condition by virtue of
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1 having failed to review plaintiff's longitudinal record was a valid reason to give it less
2 weight; (2) the ALJ properly observed that Dr. Ni's opinion was inconsistent with other
3 evidence in the record; and (3) plaintiff's argument that Dr. Ni's opinion was based on
4 her own observations in addition to plaintiff's subjective reporting was unsupported.

5 Plaintiff's objections to these findings are without merit. First, plaintiff argues
6 that the Court should hold that the magistrate judge erred in finding that the ALJ properly
7 discounted Dr. Ni's opinion due to the fact that the ALJ had not reviewed the whole of
8 plaintiff's longitudinal record. Plaintiff himself acknowledges, "Dr. Ni did not review all
9 of the evidence in this case[.]" Objections (docket no. 24) at 4 (emphasis original). As
10 the R&R notes, an ALJ may give less weight to an opinion that was reached based on a
11 single isolated examination rather than a full review of claimant's longitudinal record.
12 *See* 20 C.F.R. §§ 404.1527(c), 416.927(c). Second, a review of the record shows that the
13 ALJ correctly observed that Dr. Ni's opinion was contradicted by the opinion of Dr.
14 Victoria McDuffee, who found that plaintiff's mental health history did not support the
15 finding that his symptoms were debilitating and that plaintiff may have been exaggerating
16 the severity of his anxiety. *See* AR 693–94. Finally, the magistrate judge correctly
17 concluded that the ALJ properly discounted Dr. Ni's opinion because it was primarily
18 based on plaintiff's non-credible subjective reports rather than on her own observations.
19 As the R&R points out, Dr. Ni's evaluation primarily reiterates plaintiff's statements and
20 makes no reference to objective clinical findings or evidence. *See* AR 718–21.

21 Accordingly, the ALJ gave specific and legitimate reasons for giving Dr. Ni's opinion
22 less weight that were supported by substantial evidence. *See Bray v. Comm'r of Soc.*
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1 *Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009).

2 **C. Dr. Wayne Dees**

3 Plaintiff argues that the magistrate judge incorrectly found that the ALJ properly
4 evaluated the opinion of Dr. Wayne Dees. Dr. Dees examined plaintiff in February 2012
5 and gave the opinion that he would be unable to work in a competitive environment with
6 others and would have difficulty completing complex tasks due to his mental health
7 conditions, including PTSD, depression, anxiety, and chronic pain. AR 790. The ALJ
8 gave little weight to this opinion because: (1) Dr. Dees has not observed symptoms of
9 PTSD, irritability, or agitation during his examination of plaintiff; (2) Dr. Dees' opinion
10 was undermined by plaintiff's mental status exam, during which he was able to perform
11 complex tasks; (3) Dr. Dees had not reviewed plaintiff's longitudinal record and was
12 ignorant of pertinent information regarding plaintiff's record; and (4) Dr. Dees relied
13 heavily on plaintiff's non-credible subjective statements rather than objective findings.
14 AR 26.

15 Plaintiff's arguments with regard to Dr. Dees lack merit. First, the ALJ was
16 correct to discount Dr. Dees' opinion because it was unsupported and internally
17 inconsistent. *See Bayliss v. Barnhart*, 427 F.3d 1121, 1216 (9th Cir. 2005) (holding that
18 an ALJ may properly reject a physician's opinion when it is contradicted by that
19 physician's own notes or observations). As the R&R points out, Dr. Dees, in essence,
20 provided no basis for drawing his conclusions. Further, while Dr. Dees opined that
21 plaintiff would "likely have difficulty with more complex tasks," AR 790, the mental
22 status exam he performed on plaintiff showed the opposite, AR 791. Second, Dr. Dees'

1 opinion was worthy of less weight because Dr. Dees had not reviewed plaintiff's
2 longitudinal medical record and was accordingly not aware that plaintiff had previously
3 been gainfully employed while suffering from depression and anxiety. Third, plaintiff
4 admits that Dr. Dees did not observe symptoms of PTSD, irritability, or agitation.
5 Rather, as the R&R notes, Dr. Dees' opinion was primarily based on plaintiff's non-
6 credible subjective statements. *See* AR 790–91. Therefore, the R&R properly held that
7 the ALJ did not err in discounting Dr. Dees opinion to the extent it was based on
8 plaintiff's subjective statements, which had been deemed non-credible. *See Bray*, 554
9 F.3d at 1228. For these reasons, the ALJ gave specific and legitimate reasons for
10 affording less weight to Dr. Dees' opinion that were supported by substantial evidence.

11 **D. Drs. James Bailey and Renee Eisenhauer**

12 Drs. James Bailey and Renee Eisenhauer, state agency psychological consultants,
13 opined that plaintiff could “understand and carry out work instructions if not distracted
14 by others.” AR 96, 129. The ALJ gave this opinion significant weight and understood it
15 to mean that plaintiff could “perform simple tasks at work with some contact with
16 others.” AR 26–27. The ALJ found that in light of this assessment, plaintiff required
17 “minimal contact” with supervisors and coworkers, and he could work “in proximity to
18 coworkers, but not in a cooperative or team effort.” AR 19. Before the magistrate judge,
19 plaintiff argued that the ALJ's assessment is not consistent with this opinion. The
20 magistrate judge acknowledged that the statement from Drs. Bailey and Eisenhauer was
21 open to several interpretations, but that the ALJ's interpretation was a reasonable one and
22 therefore must be upheld. *See* R&R (docket no. 20) at 12 (citing *Morgan v. Comm'r of*
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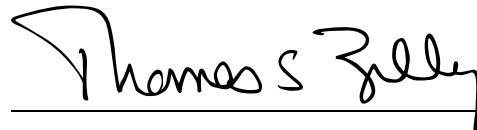
1 *Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999)).

2 Plaintiff makes that same argument here. This argument is misguided. That
3 plaintiff disagrees with the ALJ's interpretation of this statement does not make it
4 unreasonable. As the R&R found, the ALJ's interpretation was reasonable, and will
5 accordingly not be disturbed. *See Morgan*, 169 F.3d at 599.

6 **Conclusion**

7 For the foregoing reasons, the Court ADOPTS Magistrate Judge Donohue's
8 Report and Recommendation, docket no. 20, AFFIRMS the decision of the
9 Commissioner, and DISMISSES plaintiff's case with prejudice.

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11 Dated this 13th day of May, 2015.

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14 Thomas S. Zilly
15 United States District Judge
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